<u>REMARKS</u>

This paper is being presented in response to the Office Action dated November 5, 2004, wherein (i) claims 1-6, 8-21, 23-44, 46 and 47 have been rejected under 35 U.S.C. §102(e) as being anticipated by Spriggs et al. U.S. Patent No. 6,421,571 ("Spriggs"), and (ii) claims 7, 22 and 45 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Spriggs in view of Hays et al. U.S. Patent No. 5,855,791 ("Hays"). Reconsideration and withdrawal of the rejections of claims 1-47 are respectfully requested in view of the following remarks.

I.     **Summary of the Amendments**

By the foregoing amendments, claims 1, 16, 27, and 37 have been amended to specify that an application is implemented by an outside service provider to the process plant. No new matter has been added by these amendments, inasmuch as support can be found, for example, at page 11, line 23 – page 12, line 5, in the application as originally filed.

Claims 48-51 have been added to recite that the step of collecting data includes expressing the data in a descriptive language (claims 48 and 50) and that the descriptive language may be XML (claims 49 and 51). Similarly, claims 52-55 have been added to recite that first and second data are expressed in a descriptive language (claim 52), each of a plurality of applications is adapted to send data via a descriptive language (claim 54), and that the descriptive language may be XML (claims 53 and 55). No new matter has been added by these amendments. See, for example, page 13, lines 9-24, in the application as originally filed.

II.     **The 35 U.S.C. §102(e) Rejections Are Traversed**

Claims 1-6, 8-21, 23-44, 46 and 47 have been rejected under 35 U.S.C. §102(e) as being anticipated by Spriggs. Applicants respectfully traverse these rejections, and the assertions and determinations therein, for at least the following reasons. Applicants respectfully request reconsideration and withdrawal of these rejections.

Independent claim 1, as amended, and, by implication, claims 2-6 and 8-15 dependent thereon, recite a method of collecting and using data within a process plant including, *inter alia*, the step of collecting data from a service application that is

implemented by an outside service provider to the process plant. Spriggs fails to disclose or suggest collecting data from a service application implemented by an outside service provider, as recited in claim 1.

In contrast, Spriggs is directed to an asset condition monitoring system in which information is gathered from both condition monitoring devices and plant control and automation systems. Specifically, Spriggs discloses that information is gathered "from multiple information sources within the plant control and automation systems" (col. 2, lines 34-38). But none of these sources includes or involves an application implemented by an outside service provider. Each of the sources, like the process control system, and the controllers and other devices utilized thereby, constitutes part of the plant (see, e.g., col. 6, line 62 – col. 7, line 5). Thus, Spriggs does not disclose or suggest that it is desirable or even possible to collect data from a service application implemented by an outside service provider.

Furthermore, Spriggs fails to disclose or suggest making the data accessible to a service application implemented by an outside service provider, as recited in claim 1. To the extent that Spriggs discloses exporting data, such data is provided to the aforementioned control and automation systems from which information is gathered (see, e.g., col. 6, line 62 – col. 7, line 15). Spriggs thus fails to disclose or suggest that data or information be exported or otherwise made available to a service application implemented by an outside service provider.

The cited portions of Spriggs (i.e., Figs. 1 and 3; col. 2, lines 12-39) also fail to disclose or suggest either collecting data from, or making data accessible to, a service application implemented by an outside service provider. On the contrary, Fig. 1 shows the modules (e.g., 20, 80, 100, 200) of the asset management system itself, together with the data acquisition devices 60, sensors 70, and other assets of the plant. There is no disclosure or suggestion that any of the modules or other plant components shown are implemented by an outside service provider. Fig. 3 shows the system in greater detail, for instance showing that data may be acquired from "third-party machine and process controllers." But acquiring data from a controller does not necessarily involve a service application, much less one implemented by an outside service provider. Furthermore, although manufactured by a third party, such process controllers would be implemented by plant operator personnel, and there is no

disclosure or suggestion that an outside service provider would be responsible for its implementation. Lastly, the cited textual portions of Spriggs (col. 2, lines 12-39) refer to interfacing with the "plant control and automation systems" noted above, and incorporating process conditions into asset condition monitoring. Such process control information, however, is not necessarily directed to service and, again, in any event, does not involve implementation by an outside service provider.

More generally, there is no suggestion in Spriggs to involve a service application implemented by an outside service provider in the manner recited in the claims because Spriggs is focused on improving asset management by extending communications to systems other than condition monitoring devices. But these other systems are involved in control and automation (see, e.g., col. 2, lines 34-38). Thus, Spriggs is focused on the systems of the plant (e.g., plant control) arguably least likely to have been entrusted to, or implemented by, an outside service provider. The teachings of Spriggs provide no basis to expect otherwise.

Because Spriggs fails to disclose or suggest collecting data from, or making data accessible to, a service application implemented by an outside service provider, as recited by claims 1-6 and 8-15, it follows that none of these claims is anticipated by Spriggs.

Claim 16, as amended, and claims 17-21 and 23-26 dependent either directly or indirectly thereon, recite collecting second data from a second application implemented by an outside service provider associated with the process plant. As noted above, Spriggs fails to disclose or suggest that it would be desirable to collect any data from an application implemented by an outside service provider. As a result, Spriggs fails to anticipate any of claims 16-21 and 23-26.

Claim 27, as amended, and claims 28-36 dependent thereon, recite a data communication system having, among other things, a second application adapted to communicate via a second communication network and implemented by an outside service provider to the process plant, and a database communicatively coupled to the second communication network, where the database is adapted to receive second data from the second application. As noted above, Spriggs fails to disclose or suggest that it would be desirable for data to be collected or received from an application

implemented by an outside service provider. It follows that Spriggs fails to disclose or suggest an application implemented by an outside service provider, or a database adapted to receive data from such an application. As a result, Spriggs fails to anticipate any of claims 27-36.

Claim 37, as amended, and claims 38-44, 46 and 47 dependent thereon, recite a data communication system having, among other things, a plurality of applications, wherein at least one of the plurality of applications is implemented by an outside service provider to the process plant. As noted above, Spriggs fails to disclose an application implemented by an outside service provider. It follows that Spriggs fails to disclose a plurality of applications wherein at least one of the plurality of applications is implemented by an outside service provider. For these reasons, Spriggs fails to anticipate any of claims 37-44, 46 and 47.

### III.    The 35 U.S.C. §103(a) Rejections Are Traversed

Applicants respectfully traverse the rejections of claims 7, 22 and 45 under 35 U.S.C. §103(a) as being unpatentable over Spriggs in view of Hays. Reconsideration and withdrawal of these rejections are respectfully requested. Each of claims 7, 22 and 45 is submitted to be patentable for the reasons discussed above in connection with the independent claims from which these claims depend, as both Spriggs and Hays fail to disclose or suggest an application implemented by an outside service provider. More particularly, to the extent that Hays discloses a corrosion monitoring application, the application is integrated into the control system (see, e.g., col. 4, line 66 – col. 5, line 3). Because Hays fails to cure the deficiencies of Spriggs (nor has the examiner cited Hays to provide any of the missing elements), no combination of Spriggs and Hays can produce the invention recited by these claims.

It is clear that the prior art must make a suggestion of or provide an incentive for the claimed combination of elements to establish a *prima facie* case of obviousness. See, *In re Oetiker*, 977 F.2d 1443, 24 U.S.P.Q.2d 1443, 1446 (Fed. Cir. 1992); *Ex parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. 1985). Because each of Spriggs and Hays fails to disclose or suggest an application implemented by an outside service provider, or collecting data from one, it follows that no combination of these documents can render any of the pending claims obvious.

## IV.    Added Dependent Claims 48-55

Each of added claims 48-55 depend either directly or indirectly from one of the independent claims discussed above as patentable over the combination of Spriggs and Hays. It follows that each of dependent claims 48-55 is patentable over the cited combination for the reasons discussed above in connection with the independent claims, as well as because both Spriggs and Hays fail to disclose or suggest communication involving a descriptive language, such as XML. Communication, data collection and other data sharing using a descriptive language provides the capability to, among other things, collect data from an application implemented by an outside service provider. For these reasons, it is respectfully submitted that each of added dependent claims 48-55 recites patentable subject matter over the cited documents.

## V.      Conclusion

Applicants have now made an earnest attempt to place this case in condition for immediate allowance.  For the foregoing reasons and for other reasons clearly apparent, Applicants respectfully request reconsideration and allowance of claims 1-55.
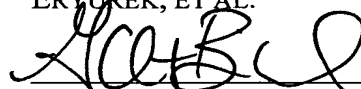
This paper is timely filed, as it is accompanied by a one-month extension of time and the requisite fee.  The Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 13-2855 of Marshall, Gerstein & Borun LLP.  In addition, if a petition for any further extension of time under 37 CFR 1.136(a) is necessary to maintain the pendency of this case and is not otherwise requested in this case, Applicants request that the Commissioner consider this paper to be a request for an appropriate extension of time and hereby authorize the Commissioner to charge the fee as set forth in 37 CFR 1.17(a) corresponding to the needed extension of time to Deposit Account No. No. 13-2855 of Marshall, Gerstein & Borun LLP.  A copy of this paper is enclosed herewith.

If there are matters that can be discussed by telephone to further the prosecution of this application, Applicants respectfully request that the Examiner call their attorney at the number listed below.

Respectfully submitted,

ERYUREK, ET AL.

By:  _____

G. Christopher Braidwood
Registration No.: 41,631
MARSHALL, GERSTEIN & BORUN LLP
6300 Sears Tower
233 South Wacker Drive
Chicago, Illinois  60606-6402
(312) 474-6300 (phone)
(312) 474-0448 (fax)

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